

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 2nd February, 2022**
Pronounced on: 14th February, 2022

+ **BAIL APPN. NO. 3067/2018**
SANGEETA BHATIA Petitioner

Through: Mr. Arvind Varma, Sr. Advocate
with Mr. Sanjeev Mahajan, Ms.
Smridhi Sharma and Mr. Sarthak
Chiller, Advocates

versus

STATE OF NCT OF DELHI Respondent

Through: Ms. Kusum Dhalla, APP for State
along with SI Harpal Madan, P.S.
EOW, Mr. Amit Khanna, Mr.
Samir Ali Khan, Mr. Nipun
Kumar, and Mr. Sahil Tokas,
Advocates for R-2

+ **BAIL APPN. NO. 1116/2019**
LAKSH BHATIA Petitioner

Through: Mr. Arvind Varma, Sr. Advocate
with Mr. Sanjeev Mahajan, Ms.
Smridhi Sharma and Mr. Sarthak
Chiller, Advocates

versus

STATE OF NCT OF DELHI Respondent

Through: Ms. Kusum Dhalla, APP for State
along with SI Harpal Madan, P.S.
EOW, Mr. Amit Khanna, Mr.
Samir Ali Khan, Mr. Nipun
Kumar, and Mr. Sahil Tokas,
Advocates for R-2

+ BAIL APPN. NO. 1119/2019
PAWAN BHATIA..... Petitioner

Through: Mr. Arvind Varma, Sr. Advocate
with Mr. Sanjeev Mahajan, Ms.
Smridhi Sharma and Mr. Sarthak
Chiller, Advocates

versus

STATE OF NCT OF DELHI Respondent

Through: Ms. Kusum Dhalla, APP for State
along with SI Harpal Madan, P.S.
EOW, Mr. Amit Khanna, Mr.
Samir Ali Khan, Mr. Nipun
Kumar, and Mr. Sahil Tokas,
Advocates for R-2

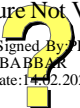
CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

[VIA VIDEO CONFERENCING]

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The present applications have been filed under Section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") on behalf of the applicants praying for anticipatory bail in FIR bearing no. 237/2018 registered at Police Station – Economic Offences Wing, for offences punishable under Sections 406/420/34 of Indian Penal Code, 1860 (hereinafter referred to as the "IPC").



2. Since, the three anticipatory bail applications bearing no. 3067/2018, 1116/2019 and 1119/2019 have arisen out of the same FIR, pertaining to the same set of facts, and have been heard together, therefore the same are decided and disposed of by way of this common judgment.

3. As per the FIR, the prosecution story is as follows:

a. Pawan Bhatia had approached M/s. Splendor Landbase Limited (“Complainant Company”) in December 2012 and represented that he along with his wife, Sangeeta Bhatia and his son, Laksh Bhatia were the lawful owners of a land measuring 13.61 acres in the revenue estate of Village Ullawas, Tehsil and District Gurgaon, situated in Sector 63-A, Gurgaon (hereinafter referred to as "said land"), which was free from all encumbrances. It is further alleged that Pawan Bhatia represented that the said land was eligible for being developed into a Group Housing Colony after taking approvals from Director of Town and Country Planning (“DTCP”), Haryana.

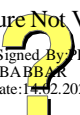
b. Pawan Bhatia had assured that all the necessary approvals from the Competent Authority will be taken by landowners, and that the Letter of Intent (“LOI”) from the DTCP for Group Housing Colony was expected soon. It is further alleged that Pawan Bhatia and other accused offered the Complainant Company to sell and transfer the Floor Space Index (“FSI”) of 5 Lakhs Square Feet out of the total FSI of 11

Lakhs Square Feet for a total of Rs. 200 crores with exclusive rights to undertake the development and construction of the Group Housing Colony.

c. Based on the aforesaid representations and inducements, the complainant company had entered into an MOU dated 27th February 2013 with the accused persons. It is further alleged that Pawan Bhatia signed the MOU for himself and on behalf of the other accused. It is further alleged that the Land Schedule which had been annexed with the MOU was signed by the applicant and other accused persons.

d. Based on the representations, the complainant company was induced into agreeing to pay an amount of Rs. 5 crores to the accused. It is further alleged that the complainant company prior to the execution of the MOU paid an amount of Rs. 2.50 crores and the balance amount of Rs. 2.50 crores were subsequently paid as per Clause 2 of the MOU. It is further alleged that Complainant Company enquired from the accused persons about the status of LOI, the accused persons started dilly dallying and never responded to the queries of the complainant company.

e. On enquiries made by the Complainant Company, it came to the knowledge of the complainant that no LOI had been granted to the accused persons. It is further alleged that it was agreed by the parties that in case the LOI is not granted within a



reasonable period of time, the complainant company would make a request for refund of the initial advance. It is further alleged that the Managing Director of the complainant company Hridey Vikram sent several messages to Pawan Bhatia requesting to refund the amount, but he never replied to such messages.

f. The Complainant Company made further enquiry about the said land, and it was revealed that many litigations were pending *qua* the said land. The complainant company further alleged that a MOU with CHD Elite Realtech was executed on 8th August 2011 and the accused persons had received an amount of Rs. 2 crores. It is further alleged that the accused had the dishonest intention since the beginning of the transaction and with the same *mens rea* the accused had concealed and kept the complainant company in dark about the execution of the said MOU with the CHD Elite Realtech.

g. The accused had misappropriated the monies of the Complainant Company and caused wrongful loss to the Complainant Company. It is further alleged that the accused are liable to pay an amount of Rs. 5 crores with interest @ 2% per month and compensation of Rs. 5 crores towards damages.

4. Mr. Arvind Varma, Senior Advocate, appearing on behalf of the applicants, submitted that the applicants have falsely and frivolously been



implicated in the present case. Learned counsel further submitted as under:

- a. That the applicants are the owner of the land in their individual capacity, and it has nowhere been alleged that accused are the co-owners of the land for which the alleged agreement has been entered into between the parties.
- b. That neither Sangeeta Bhatia was a signatory to the Agreement between the complainant and Pawan Bhatia, nor any covenant was imposed upon her which she had failed to fulfill.
- c. That even the prosecution has not sought or collected any receipt from the Complainant to prove the factum of having paid the amount as alleged in the Complaint.
- d. That the Investigating Officer had admitted in the Ld. Sessions Court that the complainant has not provided any receipt of the amount allegedly paid to the applicants.
- e. That the investigation is based on the alleged acknowledgement dated 12th September 2013, which is stated to be on the back of the MOU and is forged, hence is totally denied by Pawan Bhatia.
- f. That even the balance sheet of the complainant company for the said period does not show any amount being paid to the applicants except the amount which has been returned by the applicants.
- g. That even on a perusal of FIR, it is clear that no prima facie case under any Section of the IPC is made out against the

applicants and the civil transaction has unnecessarily been given a criminal color.

h. That the entire MOU stood cancelled and revoked with the consent of the parties and for over five years neither any litigation, correspondence nor any complaint was lodged, and it is only on 10th August 2018 for the first time that a complaint was made.

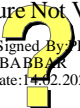
i. That applicants have duly complied with the notices and joined the investigation twice after the filing of the bail application before the Ld. Sessions Court and had also cooperated with the investigation during the inquiry into the said Complaint and submitted a detailed reply along with all the documents.

j. That the applicants are ready and willing to offer a security by depositing the title deeds of the said land in lieu of the cash deposit of Rs. 2.50 crores.

k. That the applicants also undertake to further join investigation on any date or to furnish any documents as required by the Investigating Officer.

In light of the aforesaid, it is submitted that the applicants be granted anticipatory bail.

5. *Per Contra*, Ms. Kusum Dhalla, learned APP appearing on behalf of the State has vehemently opposed the application and stated that in the connected matters, the Status Report has been filed by the State on various dates – 19th February 2019, 26th August 2019, 26th November



2019, and 21st January 2020 wherein the facts as unearthed during the course of investigation as well as the grounds for denial of the anticipatory bail have been mentioned. Ms. Dhalla, while reiterating the contents of the Status Reports, submitted as under:

- a. That during the interrogation, the accused Pawan Bhatia had admitted the fact of execution of the MOU dated 27th February 2013 between (i) Pawan Bhatia, (ii) Smt. Sangeeta Bhatia and (iii) Laksh Bhatia (as First Party) and M/s Splendor Landbase Ltd. through its MD Sh. Hridey Vikram (as Second Party/Developer) with regard to the development of 5 lakhs square feet on the land measuring 13.61 acres in Village Ullhawas, Sector-63A, Tehsil & Distt. Gurgaon, Haryana.
- b. That he further admitted that a total amount of Rs. 1.34 crore was received from the complainant out of which Rs. 1.20 crore has been returned and only Rs. 14 lacs are pending. During interrogation, he denied having received Rs. 5 crores.
- c. That he was shown the back side of last page of Land Schedule annexed with photocopy of MOU dated 27.02.13 on which it was written "Recd. Rupees 5/- crores, by cheque and cash. 12/09/2013 PB", which he denied having written and claimed to be forged. However, the handwriting in question was sent to the FSL for examination along with specimen/admitted signature/handwriting of accused Pawan Bhatia. On 15th September 2019, the FSL report was received, wherein it was opined that "the person who wrote the red enclosed writings &

Signature stamped and marked S-1 to S-14 & A-1 to A-11 also wrote the red enclosed writings & signature similarly stamped and marked Q1 & Q1/1”. Thereby, the claim of the accused that he had not received Rs. 5 crores and the questioned handwriting doesn’t belong to him, was found to be incorrect.

d. That the applicants hatched criminal conspiracy to cheat the complainant and had knowingly conceded from the complainant the fact about their ongoing dispute with M/s CHD Elite Realtech Pvt. Ltd with a *mala fide* intent; that till date, no license has been granted to the accused on the land in question and the amount paid by the complainant is yet to be recovered.

e. That the applicants have held facts and have failed to cooperate during the investigation and hence, custodial interrogation of the accused is required.

6. In light of the aforesaid, there is grave apprehension that the applicants might jump and abscond, and hence, it is submitted that the bail applications be rejected.

7. Mr. Amit Khanna learned counsel appearing on behalf of the complainant vehemently opposed the instant applications and stated that the applications be rejected at the very outset. Learned counsel submitted that the accused had dishonest intentions since the beginning of the transaction, and had defrauded the complainant wilfully, and further with the same *mens rea* the applicants had concealed and kept the complainant company in dark about the execution of the said MOU with CHD Elite Realtech. Learned counsel also stated that the accused have



misappropriated and mis-utilized the monies of the complainant company and caused wrongful loss to the complainant. Learned counsel submitted that the offence thus committed by the applicants is grave in nature and hence the applicants do not merit the indulgence of this Court by granting anticipatory bail, and therefore the petitions be dismissed.

8. Heard learned counsels appearing on behalf of parties and perused the record.

9. Before analysing the application for anticipatory bail, it is essential to take note of the approach that is expected from the High Courts to be adopted while dealing with such applications, as observed by the Hon^{ble} Supreme Court in the case of *Arnab Manoranjan Goswami v. State of Maharashtra (2021) 2 SCC 427*:

“More than four decades ago, in a celebrated judgment in State of Rajasthan v. Balchand [State of Rajasthan v. Balchand, (1977) 4 SCC 308 : 1977 SCC (Cri) 594] , Krishna Iyer, J. pithily reminded us that the basic rule of our criminal justice system is “bail, not jail” [These words of Krishna Iyer, J. are not isolated silos in our jurisprudence, but have been consistently followed in judgments of this Court for decades. Some of these judgments are: State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21: 2005 SCC (Cri) 1960 (2) and Sanjay Chandra v. CBI, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397]. The High Courts and courts in the district judiciary of India must enforce this principle in practice, and not forego that duty, leaving this Court to intervene at all times. We must in particular also emphasise the role of the district judiciary, which provides the first point of interface to the citizen. Our



district judiciary is wrongly referred to as the “subordinate judiciary”. It may be subordinate in hierarchy but it is not subordinate in terms of its importance in the lives of citizens or in terms of the duty to render justice to them. High Courts get burdened when courts of first instance decline to grant anticipatory bail or bail in deserving cases. This continues in the Supreme Court as well, when High Courts do not grant bail or anticipatory bail in cases falling within the parameters of the law. The consequence for those who suffer incarceration are serious. Common citizens without the means or resources to move the High Courts or this Court languish as undertrials. Courts must be alive to the situation as it prevails on the ground—in the jails and police stations where human dignity has no protector. As Judges, we would do well to remind ourselves that it is through the instrumentality of bail that our criminal justice system's primordial interest in preserving the presumption of innocence finds its most eloquent expression. The remedy of bail is the “solemn expression of the humaneness of the justice system”. Tasked as we are with the primary responsibility of preserving the liberty of all citizens, we cannot countenance an approach that has the consequence of applying this basic rule in an inverted form. We have given expression to our anguish in a case where a citizen has approached this Court. We have done so in order to reiterate principles which must govern countless other faces whose voices should not go unheard.”

10. The Constitution Bench judgment in the case of ***Gurubaksh Singh Sibbia v. State of Punjab (1980) 2 SCC 565*** has been serving as an encyclopedia for the cases in relation to anticipatory bail. Therein, the court also called for a similar approach when it observed:



“26. We find a great deal of substance in Mr Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been imposed by the legislature in the terms of that section. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned.”

11. The Hon^{ble} Supreme Court in the case of ***Siddharam Satlingappa Mhetre v. State of Maharashtra (2011) 1 SCC 694*** concerning grant of anticipatory bail after exhaustively analysing the rights under Article 21 held as under:

“A great ignominy, humiliation and disgrace is attached to the arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.”

12. A three-judge bench of the Hon^{ble} Supreme Court in the case of ***Nathu Singh v. State of U.P. (2021) 6 SCC 64*** has called for a liberal



interpretation in the cases relating to grant of anticipatory bail, when it observed:

“19. At first blush, while this submission appears to be attractive, we are of the opinion that such an analysis of the provision is incomplete. It is no longer res integra that any interpretation of the provisions of Section 438 CrPC has to take into consideration the fact that the grant or rejection of an application under Section 438 CrPC has a direct bearing on the fundamental right to life and liberty of an individual. The genesis of this jurisdiction lies in Article 21 of the Constitution, as an effective medium to protect the life and liberty of an individual. The provision therefore needs to be read liberally, and considering its beneficial nature, the courts must not read in limitations or restrictions that the legislature have not explicitly provided for. Any ambiguity in the language must be resolved in favour of the applicant seeking relief.”

13. Since the genesis of the statutory right to anticipatory bail is traced under Article 21 of the Constitution, it is essential to understand the true import of the same. The Hon^{ble} Supreme Court has held that such right to life does not merely mean animal-like existence but includes wider connotations to make the life meaningful. Going a step further, anticipatory bail has been enshrined as a statutory right as well under Section 438 of the Code. Thus, there is no doubt that the provision merits being invoked in appropriate cases, more so, in light of the general bail jurisprudence wherein – bail is a matter of right and „bail, not jail is the normal rule“.

14. It is equally important to take into consideration the factors that the Court must keep in purview while deciding the question or refusing anticipatory bail. In a recent judgement, the Constitutional bench of the Hon“ble Supreme Court had the occasion to consider some important aspects of anticipatory bail in the case of *Sushila Aggarwal v. State (NCT of Delhi) (2020) 5 SCC 1*. The Hon“ble Court therein analysed the concept of anticipatory bail at great length and held as under:

“92.3 Nothing in Section 438 CrPC, compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified — and ought to impose conditions spelt out in Section 437(3) CrPC [by virtue of Section 438(2)]. The need to impose other restrictive conditions, would have to be judged on a case-by-case basis, and depending upon the materials produced by the State or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.

92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the

offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.”

15. In the instant case, since forgery has been alleged, the nature of evidence is substantially documentary in nature and is already in the custody of the investigative agency. *Secondly*, despite five years having been passed since the date of the FIR, no chargesheet has been filed till date. *Thirdly*, as per the Order dated 21st December 2018, one of the applicants, Sangeeta Bhatia had been granted interim protection and there is no allegation that the applicant has misused the interim protection granted. *Fourthly*, the applicants are ready and willing to offer a security by depositing the title deeds of the said land in lieu of the cash deposit of Rs.2.50 crores. *Lastly*, the State has not denied the *factum* that the Applicants have clean antecedents.

16. Thus, in light of the aforesaid, the applicants are entitled to indulgence of this Court and this Court is inclined to grant anticipatory bail to the applicants as being prayed for.

17. In view of the aforementioned facts, circumstances, analysis and reasoning, as well as keeping in mind the legal position and the proposal made by the applicants, this Court is persuaded to allow the instant anticipatory bail applications bearing number 3067/2018, 1116/2019 and 1119/2019.



18. The applicants, in compliance with the proposal made by the learned counsel in the oral submissions, are directed to deposit the title deeds of the said land, as a security in lieu of the amount in question, with the Complainant.

19. It is accordingly directed that in the event of arrest, the applicants namely Sangeeta Bhatia, Laksh Bhatia and Pawan Bhatia, in anticipatory bail applications bearing no. 3067/2018, 1116/2019 and 1119/2019 respectively, shall be admitted to bail by the Investigating Officer on furnishing a personal bond of Rs. 50,000/- (Rupees Fifty Thousand Only) each, with one surety of like amount for each applicant to the satisfaction of the Investigating Officer, subject to following conditions applicable on each Applicant individually:

- a) the Applicant shall surrender his/her passport, if any, to the Investigating Officer and shall under no circumstances leave India without prior permission of the Court concerned;
- b) the Applicant shall cooperate in the investigation and appear before the Investigating Officer of the case as and when required;
- c) the Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;



- d) the Applicant shall provide his/her mobile number(s) to the Investigating Officer and keep it operational at all times;
 - e) the Applicant shall drop a PIN on the Google map to ensure that his location is available to the Investigating Officer; and
 - f) In case of change of residential address and/or mobile number, the Applicant shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.
20. The applications stand disposed of in the above terms.
 21. Pending applications, if any, also stand disposed of.
 22. It is made clear that the observations made herein while disposing of the instant bail applications shall have no bearing whatsoever on the merits of the case during trial.
 23. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

February 14, 2021
dy/@k

